

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16328 of Hugh V. Kelly, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to establish an accessory parking lot in the residential portion of a site in a C-1/ R-5-A District at premises 3922 12th Street, N.E. (Square 3887, Lot 5).

HEARING DATE: April 1, 1998
DECISION DATE: April 1, 1998 (Bench Decision)

ORDER

1. The subject property is located in the Northeast Ward 5 neighborhood of Brookland between Quincy and Randolph streets. The premise address is 3922 12th Street, N.E. The property is bordered by 12th Street on the east and Michigan Avenue on the west. The property is split-zoned C-1/R-5-A. The eastern portion of the property is located in the C-1 District, while the western portion is located in the R-5-A District. A parking lot is a matter-of-right use in the C-1 District and the applicant now uses the C-1 portion of this lot for that purpose.
2. The property measures approximately 51 feet in width and 156 feet in depth, and contains approximately 7,950 square feet of land area.
3. The site is enclosed by chain-link fencing on four sides. There are gates on the eastern and western portions of the fence to allow the property to be secured when not in use. The entire site is configured as a parking lot, although only the commercially zoned portion is currently in operation. Concrete barriers divide the property along the zone line to prevent cars from entering the residentially zoned portion of the lot. There are currently 11 parking spaces in the commercially zoned portion of the lot and the applicant proposes to add 10 parking spaces on the residentially zoned portion of the lot. There are no buildings on the property.
4. The entire property was used as an accessory parking lot to a retail store by the previous owner pursuant to a special exception for such use granted by the Board in 1973 (BZA Application No. 11309). The retail store closed and the special exception was not renewed before the previous owner sold the property. The previous order expired in 1978 and contained eight conditions. One of the conditions states that the site shall be approved for a period of five years, that is between June 13, 1973 and June 13, 1978.
5. The applicant is the owner of a restaurant located at 3908 12th Street, N.E., Kelly's Ellis Island Restaurant and Pub. The applicant proposes to use the residentially zoned portion of the property as a parking lot for customers of the restaurant. The proposed parking lot would augment the parking needs of the applicant's business. The Board indicated that, because of the

split zoning of the site, it would be unreasonable to impose upon half of the lot what is not imposed upon the other.

6. The applicant is requesting the Board's approval to operate a parking lot in a residentially zoned District pursuant to Section 213 of the Zoning Regulations.

7. The applicant testified that he purchased the subject property to use its entirety as a parking lot for customers of his restaurant. When he applied for a Certificate-of-Occupancy, the applicant was informed that only the commercially zoned portion of the site could be used for parking. The applicant was forced to erect concrete barricades across the property to prevent customers from parking on the residentially zoned portion of the lot.

8. The applicant further stated that he is able to comply with all of the requirements for parking lots enumerated in Chapter 23 of the Zoning Regulations.

9. Advisory Neighborhood Commission 5A, by resolution dated March 5, 1998, voted to support the application.

10. In an officially convened meeting of Single Member District (SMD) 5A06, held February 12, 1998, citizens voted unanimously to approve the application, and agreed that the applicant's "request to open the back half of already existing parking in the back of his restaurant will not infringe upon the residential environment of the neighborhood".

11. The Board received a letter in support of the application from Councilmember Harry L. Thomas, Sr. Councilmember Thomas cited the need for additional off-street parking to accommodate restaurant patrons and to ensure that residents of neighboring homes have adequate on-street parking.

12. The Board received a letter of support from a neighboring property owner. The letter stated that the applicant has been an asset to the neighborhood and needs the parking lot to accommodate customers of the restaurant.

13. The D.C. Office of Planning did not submit a report on the application.

14. Two neighboring property owners testified in opposition to the application. The neighbors' property abuts the site to the north. The neighbors testified that the site has not been properly used and maintained as a parking lot. Specifically, the conditions contained in the previous order have been flagrantly violated. Additionally, the commercial use of the site has negatively impacted their property (poor maintenance of the grounds and landscaping, loitering, unauthorized pedestrian and vehicular traffic using the premises, lack of security, etc.). The applicant pointed out that all of the negative examples discussed in the testimony occurred prior to the current owner's use of the premises. It was also stated that the current owner has made strides toward improving the condition of the lot.

15. The neighbors testified that the chain-link fence along the western boundary of the subject property is actually located in public space. However, the official plat of the subject

property, obtained from the D.C. Surveyor's Office, and submitted to the Board along with the application in this case, indicates that the fence is not located in public space. The neighbors stated that they have not been able to find the recorded easement in the land records of the District of Columbia.

16. The neighbors requested that if the Board approve the application that the same conditions imposed by the Board in 1973 accompany the approval.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The site has been used as a parking lot (intermittently) for over 20 years. The residentially zoned portion of the subject property was used for parking pursuant to a special exception granted by the Board, with conditions, in 1973.
2. The applicant seeks to use the property in the same manner as used previously, pursuant to the special exception granted by the Board in 1973. The record does not contain any information to substantiate the argument of the opposition that a portion of the lot is located in public space.
3. The applicant submitted an official Surveyor's plat of the subject property showing proposed landscaping and parking configuration.
4. The applicant proposes a use that would be consistent with applicable requirements of Chapter 23 of the Zoning Regulations.
5. The site is split-zoned and a through lot. Half of the lot is used for parking and half is vacant. It would be unreasonable to impose different standards or conditions on the commercial portion of the lot that are different from the portion that is residentially zoned.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to operate a parking lot in an R-5-A District. The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board concludes that it has accorded the views of ANC 5A the "great weight" to which it is entitled and is of the opinion that the issues raised by the neighbors in opposition to the application will be addressed in the conditions to this order.

The Board concludes that the applicant has met the burden of proof. The Board further concludes that the proposal to use the residentially-zoned portion of the property for customers

parking would be in harmony with the general purpose and intent of the zone plan and would not adversely affect the use of neighboring properties.

Based on the foregoing, the Board **ORDERS** that this application be **GRANTED**, **SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **SIX (6) YEARS**.
2. Twenty-one (21) parking spaces shall be provided on the lot as identified on Exhibit 2 of the record.
3. The hours of operation shall be 8:00 a.m. to 1:00 a.m., Monday through Thursday, and 8:00 a.m. to 2:00 a.m., Friday through Sunday.
4. The parking lot shall be secured with a chain link fence and gates. It shall be locked when not in use.
5. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
6. An eight (8") coping shall be erected and maintained along each side of all driveways to protect the public space.
7. Bumper stops shall be installed and maintained for the protection of all adjoining buildings.
8. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
9. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a health growing condition and in a neat and orderly appearance.
10. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
11. Any lighting used to illuminate the parking lot shall be arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 3-0 (Herbert M. Franklin, Betty King and Sheila Cross Reid to grant; Maurice Foushee not present, not voting).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

MAY - 6 1998

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord16328/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16328

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY - 6 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Jerry A. Moore, III (Attorney for the Applicant)
Arter & Hadden
1801 K Street, NW, Suite 400K
Washington, DC 20006

Hugh V. Kelly
111 Virginia Avenue
Edgewater, MD 21037

Joseph L. Bowser, Chairperson
Advisory Neighborhood Commission 5A
Slowe School Demountable
14th & Irving Streets, NE
Washington, DC 20017

Rodney Creecy
Sandra F. Peaches
4501 Venton Place
Lanham, MD 20706

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: MAY - 6 1998